

AMENDED IN ASSEMBLY JUNE 10, 2008

AMENDED IN SENATE APRIL 7, 2008

AMENDED IN SENATE MARCH 24, 2008

SENATE BILL

No. 1322

Introduced by Senator Lowenthal

February 20, 2008

An act to amend Sections 38135, 44932, 44939, 45303, and 88122 of, and to repeal Section 38136 of, the Education Code, and to amend ~~Section 1028 of Sections 1028, 1360, 3103, and 18150 of, to add Section 1225.5 to,~~ and to repeal Sections 1027.5 and 1028.1 of, the Government Code, relating to ~~communism~~ *public employment and property*.

LEGISLATIVE COUNSEL'S DIGEST

SB 1322, as amended, Lowenthal. ~~Communism.~~ *Public employment and property.*

(1) The Civic Center Act requires the governing body of a school district to grant the use of school property, when an alternative location is not available, to nonprofit organizations, and clubs or associations organized to promote youth and school activities. That act also contains other provisions that require a person who intends to use school property on behalf of an organization to deliver a statement, signed under penalty of perjury, that the organization is not a Communist action organization or Communist front organization required to be registered with the Attorney General of the United States or does not, to the best of that person's knowledge, advocate the overthrow of the government of the United States or of the State of California by force, violence, or other unlawful means. These other provisions have been declared unconstitutional.

This bill would delete those unconstitutional provisions.

(2) Existing law prohibits an individual, society, group, or organization from using school property for the commission of any act intended to further a program or movement the purpose of which is to accomplish the overthrow of the government of the United States or of the state by force, violence, or other unlawful means.

This bill would, in addition, permit the school board to require the furnishing of information as it deems reasonably necessary to determine that the use of school property for which application is made would not violate that provision.

(3) Under existing law, a permanent or classified school employee, or a classified community college employee may be suspended or dismissed from employment for specified causes, including, but not limited to, knowing membership in the Communist party.

This bill would delete provisions that a permanent or classified school employee, or a classified community college employee may be suspended or dismissed from employment if he or she is a knowing member of the Communist Party.

(4) Under existing law, a public employee is required to answer, under oath, specified questions, including, but not limited to, knowing membership in an organization advocating the forceful or violent overthrow of the government of the United States or of any state.

This bill would delete these provisions. The bill would also delete related findings and declarations by the Legislature regarding communism and the Communist Party.

(5) *The California Constitution requires members of the Legislature, and all public officers and employees, to take a specified oath of office. The California Constitution permits inferior officers and employees to be exempted by law from this requirement.*

This bill would require that a public employee or applicant seeking public employment be permitted to decline to take and subscribe to the oath of office based on religious beliefs that conflict with his or her ability to take and subscribe to the oath without mental reservation, provided that he or she is otherwise willing and able to uphold the United States Constitution and the constitution and laws of this state and to complete the duties of employment. The bill would except from these provisions a public officer, employee, or applicant for public employment who is elected or who serves at the pleasure of an elected official. The bill would also make conforming changes and make a statement of findings.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature hereby finds and declares the
2 following:

3 (a) From 1946 to 1991, the United States of America was locked
4 in a precarious and potentially deadly “Cold War” with the Soviet
5 Union.

6 (b) At the height of the Cold War, California responded to the
7 perceived threat of a communist takeover and enacted a number
8 of statutes subjecting members of the Communist Party, or others
9 who refused to testify against themselves under oath, to termination
10 of employment.

11 (c) Though communists who attempted to harm the United
12 States and collude with her enemies during the Cold War were
13 prosecuted for their actions, many innocent persons suffered due
14 to nothing more than their personal political convictions or
15 relationships.

16 (d) Although the Cold War is long over and the threat of a
17 communist takeover of the state or federal government no longer
18 exists, these statutes remain current law.

19 (e) The United States Constitution and longstanding tradition
20 guarantee all Americans the right to freely associate with others
21 of similar beliefs no matter how unpopular those beliefs might be.

22 (f) These statutes are inconsistent with constitutional protections
23 of free speech, political affiliation, and the right to remain silent.

24 (g) While this act repeals statutes that subject persons to
25 termination based on their affiliation with a political party, the act
26 maintains existing laws that allow for termination of an employee
27 who is knowingly a member of an organization that advocates the
28 overthrow of the state or federal government by force or violence.

29 SEC. 2. *The Legislature further finds and declares the*
30 *following:*

31 (a) *Section 3 of Article XX of the California Constitution*
32 *requires that members of the Legislature and all public officers*
33 *and employees take and subscribe to the oath that is set forth in*
34 *its provisions and defines public officer or employee for these*
35 *purposes.*

1 **(b)** *Section 3 of Article XX of the California Constitution permits*
2 *the Legislature to make exceptions from the oath requirement for*
3 *“inferior officers and employees.”*

4 **(c)** *The California Supreme Court, in the case of Vogel v. County*
5 *of Los Angeles (1967) 68 Cal.2d 18, struck down the second*
6 *paragraph of the oath set forth in the provisions of Section 3 of*
7 *Article XX of the California Constitution as an unconstitutional*
8 *violation of the rights guaranteed by the First Amendment of the*
9 *United States Constitution.*

10 **(d)** *Some applicants for public employment who are loyal*
11 *citizens and well qualified for their respective jobs are precluded*
12 *by their religious beliefs from taking oaths.*

13 **(e)** *It is necessary to create an appropriate exemption for loyal*
14 *and qualified employees and applicants for public employment*
15 *based on the fundamental American value of freedom of religion.*

16 ~~SEC. 2:~~

17 **SEC. 3.** Section 38135 of the Education Code is amended to
18 read:

19 38135. Any use, by any individual, society, group, or
20 organization for the commission of any act intended to further any
21 program or movement the purpose of which is to accomplish the
22 overthrow of the government of the United States or of the state
23 by force, violence, or other unlawful means shall not be permitted
24 or suffered.

25 Any individual, society, group, or organization which commits
26 any act intended to further any program or movement the purpose
27 of which is to accomplish the overthrow of the government by
28 force, violence, or other unlawful means while using school
29 property pursuant to the provisions of this chapter is guilty of a
30 misdemeanor.

31 The school board may require the furnishing of information as
32 it deems reasonably necessary to make the determination that the
33 use of school property for which application is made would not
34 violate this section.

35 ~~SEC. 3:~~

36 **SEC. 4.** Section 38136 of the Education Code is repealed.

37 ~~SEC. 4:~~

38 **SEC. 5.** Section 44932 of the Education Code is amended to
39 read:

1 44932. (a) A permanent employee shall not be dismissed
2 except for one or more of the following causes:

3 (1) Immoral or unprofessional conduct.

4 (2) Commission, aiding, or advocating the commission of acts
5 of criminal syndicalism, as prohibited by Chapter 188 of the
6 Statutes of 1919, or in any amendment thereof.

7 (3) Dishonesty.

8 (4) Unsatisfactory performance.

9 (5) Evident unfitness for service.

10 (6) Physical or mental condition unfitting him or her to instruct
11 or associate with children.

12 (7) Persistent violation of or refusal to obey the school laws of
13 the state or reasonable regulations prescribed for the government
14 of the public schools by the State Board of Education or by the
15 governing board of the school district employing him or her.

16 (8) Conviction of a felony or of any crime involving moral
17 turpitude.

18 (9) Violation of Section 51530 or conduct specified in Section
19 1028 of the Government Code.

20 (10) Alcoholism or other drug abuse which makes the employee
21 unfit to instruct or associate with children.

22 (b) The governing board of a school district may suspend
23 without pay for a specific period of time on grounds of
24 unprofessional conduct a permanent certificated employee or, in
25 a school district with an average daily attendance of less than 250
26 pupils, a probationary employee, pursuant to the procedures
27 specified in Sections 44933, 44934, 44935, 44936, 44937, 44943,
28 and 44944. This authorization shall not apply to any school district
29 which has adopted a collective bargaining agreement pursuant to
30 subdivision (b) of Section 3543.2 of the Government Code.

31 ~~SEC. 5.~~

32 *SEC. 6.* Section 44939 of the Education Code is amended to
33 read:

34 44939. (a) Upon the filing of written charges, duly signed and
35 verified by the person filing them with the governing board of a
36 school district, or upon a written statement of charges formulated
37 by the governing board, charging a permanent employee of the
38 district with immoral conduct, conviction of a felony or of any
39 crime involving moral turpitude, with incompetency due to mental
40 disability, with willful refusal to perform regular assignments

1 without reasonable cause, as prescribed by reasonable rules and
2 regulations of the employing school district, or with violation of
3 Section 51530, the governing board may, if it deems action
4 necessary, immediately suspend the employee from his or her
5 duties and give notice to him or her of his or her suspension, and
6 that 30 days after service of the notice, he or she will be dismissed,
7 unless he or she demands a hearing.

8 (b) If a permanent employee demands a hearing within the
9 30-day period, he or she shall continue to be paid his or her regular
10 salary during the period of suspension and until the entry of the
11 decision of the Commission on Professional Competence, if and
12 during that time as he or she furnishes to the school district a
13 suitable bond, or other security acceptable to the governing board,
14 as a guarantee that the employee will repay to the school district
15 the amount of salary so paid to him or her during the period of
16 suspension in case the decision of the Commission on Professional
17 Competence is that he or she shall be dismissed. If it is determined
18 that the employee may not be dismissed, the school board shall
19 reimburse the employee for the cost of the bond.

20 ~~SEC. 6:~~

21 *SEC. 7.* Section 45303 of the Education Code is amended to
22 read:

23 45303. In addition to any causes for suspension or dismissal
24 which are designated by rule of the commission, employees in the
25 classified service shall be suspended and dismissed in the manner
26 provided by law for conduct specified in Section 1028 of the
27 Government Code.

28 ~~SEC. 7:~~

29 *SEC. 8.* Section 88122 of the Education Code is amended to
30 read:

31 88122. In addition to any causes for suspension or dismissal
32 which are designated by rule of the commission, employees in the
33 classified service shall be suspended and dismissed in the manner
34 provided by law for conduct specified in Section 1028 of the
35 Government Code.

36 ~~SEC. 8:~~

37 *SEC. 9.* Section 1027.5 of the Government Code is repealed.

38 ~~SEC. 9:~~

39 *SEC. 10.* Section 1028 of the Government Code is amended
40 to read:

1 1028. It shall be sufficient cause for the dismissal of any public
2 employee when that public employee advocates or is knowingly
3 a member of an organization which during the time of his or her
4 membership he or she knows advocates overthrow of the
5 government of the United States or of any state by force or
6 violence.

7 ~~SEC. 10.~~

8 *SEC. 11.* Section 1028.1 of the Government Code is repealed.

9 *SEC. 12.* Section 1225.5 is added to the Government Code, to
10 read:

11 1225.5. (a) *Notwithstanding any other provision of law to the*
12 *contrary, a public employee or applicant seeking public*
13 *employment shall be permitted to decline to take and subscribe to*
14 *the oath required by Section 3 of Article XX of the California*
15 *Constitution based on religious beliefs that conflict with his or her*
16 *ability to take and subscribe to the oath without mental reservation,*
17 *provided that he or she is otherwise willing and able to uphold*
18 *the United States Constitution and the constitution and laws of*
19 *this state and to complete the duties of employment.*

20 (b) *The option to decline to take and subscribe to the oath*
21 *required by Section 3 of Article XX of the California Constitution*
22 *based on religious beliefs provided by this section shall not apply*
23 *to a public officer, employee, or applicant for public employment*
24 *who is elected or who serves at the pleasure of an elected official.*

25 *SEC. 13.* Section 1360 of the Government Code is amended to
26 read:

27 1360. Unless otherwise provided, *and subject to the limitations*
28 *of Section 1225.5,* before any officer enters on the duties of his or
29 her office, he or she shall take and subscribe the oath or affirmation
30 set forth in Section 3 of Article XX of the Constitution of
31 California.

32 *SEC. 14.* Section 3103 of the Government Code is amended to
33 read:

34 3103. ~~The~~ *Subject to the limitations of Section 1225.5, the oath*
35 *or affirmation required by this chapter is the oath or affirmation*
36 *set forth in Section 3 of Article XX of the Constitution of*
37 *California.*

38 *SEC. 15.* Section 18150 of the Government Code is amended
39 to read:

1 18150. ~~The~~ *Subject to the limitations of Section 1225.5, the*
2 oath required by this chapter is the oath set forth in Section 3 of
3 Article XX of the Constitution of California.

O